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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re DYLAN A., a Person Coming Under
the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

DYLAN A.,

Defendant and Appellant.

A122664

(Alameda County
Super. Ct. No. SJ08009748-01)

Appellant Dylan A. admitted that he committed lewd and lascivious conduct with a four-year-old girl. (See Pen. Code, § 288, subd. (a); Welf. & Inst. Code,¹ § 602, subd. (a).) A judge of the juvenile court committed him to the Department of Corrections and Rehabilitation, Division of Juvenile Justice (DJJ), for a maximum term of commitment of eight years. Dylan appeals, contending that his commitment was in error because there was no substantial evidence of probable benefit to him from the commitment. (§ 734.) We affirm the juvenile court's order.

I. FACTS

A. Underlying Events

In 2008, four-year-old Jane Doe spent her days with Laura A., her daycare provider. Appellant Dylan A. was Laura's then-15-year-old son. In May 2008, Jane Doe

¹ All further statutory references are to the Welfare and Institutions Code.

reported to her parents that when Laura was gone from daycare, Dylan had removed her pants and had her touch his penis. The parents reported their daughter's comments to police, also reporting that she had exhibited sexualized behavior for a period of about six months.

The police obtained an arrest warrant for Dylan and went to his home to execute it. After Dylan was arrested and waived his *Miranda*² rights, he admitted committing several sexual offenses against Jane Doe. Specifically, he admitted that between October and December 2007, he engaged in 12 to 15 lewd and lascivious acts and at least six acts of oral copulation.³ These acts occurred while his mother left him in charge of the children in her daycare center for brief periods of time. Dylan was detained at juvenile hall.

B. *Adjudication*

Three days later, a petition was filed alleging that he came within the jurisdiction of the juvenile court because of his commission of 18 felonies—six acts of oral copulation and 12 acts of lewd and lascivious conduct with Jane Doe. (§ 602, subd. (a).) The parents sought to have Dylan returned to their home, but the juvenile court commissioner rejected that request, noting that the minor was a predator and a danger to others. A return to the parents' home was found to be contrary to Dylan's welfare. The juvenile court commissioner ordered Dylan's continued detention. A restraining order also issued precluding him from any contact with the girl.

On May 21, 2008, Dylan admitted the truth of one allegation of lewd and lascivious conduct. The juvenile court commissioner sustained one allegation of felony lewd and lascivious conduct. The remaining allegations were dismissed on the prosecution's motion. Dylan was advised the maximum term of commitment was eight years. The juvenile court commissioner ordered a psychological evaluation.

² *Miranda v. Arizona* (1966) 384 U.S. 436.

³ Later, Dylan reported that he committed no more than five acts of molestation, not the 12 to 15 acts of lewd and lascivious conduct that he reported to police.

Dylan's parents sought to have him released to their home so that he could participate in an outpatient program to address the issues that led him to commit these offenses. By this time, Laura had ceased operating her daycare business. The parents offered evidence that Dylan had a strong family to support him, was a good student at school, and was active at his church. They intended to prevent him from having any access to a computer or to any unsupervised contact with minors in their home. The juvenile court commissioner had not received the results of any psychological evaluation. Until it saw those results, it rejected the request for Dylan's release from juvenile hall.

C. Psychological Evaluations

1. Private Psychologist Evaluation

Before the court-ordered evaluation was completed, Dylan's family hired a private psychologist to conduct an independent evaluation. During this evaluation, the minor admitted that by the time he was 14, he viewed pornography on the Internet daily, usually masturbating while doing so. He admitted as many as five instances of molestation had occurred, but denied any more than that number. Dylan reported that in their first encounter, Jane Doe came into the room where he was masturbating in front of the computer. A week later, he invited Jane Doe to come into the den with him and the two of them watched pornography on the computer while he masturbated. By the third or fourth encounter, he may have briefly touched her vagina and guided her to orally copulate him. He ejaculated into her mouth on the last occasion. When Jane Doe cried and said that she was scared, he knew that he could no longer engage in the sex acts with her. Dylan did not molest her again, but admitted that if she had not cried, he would have done so. He asked Jane Doe not to say anything about these encounters, offering her candy and snacks to continue participating in these sex acts.

Dylan stopped molesting Jane Doe on his own, deciding that it was better to seek more sexual contact with his girlfriend. Dylan told the psychologist that he did not expect to be held at juvenile hall. During his interview, he expressed shame, guilt and remorse for what he did. He wanted to understand why he did the things that he did and was ready for counseling.

The psychologist opined that Dylan did not have serious mental or emotional problems. He did not appear to have a predisposition to young children as objects of sexual interest. He believed that the sexually inappropriate behavior was situational, characterizing Jane Doe as being a victim of opportunity. Dylan had developed a sexual addiction with the use of Internet pornography and compulsive masturbation. The psychologist recommended that the minor participate in treatment for sexual addiction and for issues associated with the molestation. That treatment could be provided in a residential facility or on an outpatient basis. The psychologist opined that Dylan was a good candidate for outpatient treatment while living at home.

2. Court Psychiatric Evaluation

Shortly before the initial disposition hearing before the juvenile court commissioner, the court-ordered psychological evaluation was completed. In that evaluation, the psychiatric social worker observed that while Dylan's behavior seemed totally out of character for him, sexually abusive behavior could be buried deep below the surface. He observed that the minor and his parents tried hard to maintain others' good impression of him. Dylan tried to convince others that his behavior was an aberration and not an accurate representation of who he was. He engaged in denial and minimization of some aspects of his misconduct.

The psychiatric social worker opined that Dylan had a fragile ego and was much more troubled than he was willing to admit. He was not psychotic, but did engage in obsessive-compulsive behavior. Without significant intervention, the psychiatric social worker opined that the likelihood that Dylan would continue to engage in this type of abusive behavior was in the moderate to moderate-high range. He might reoffend even if he obtained intensive, effective treatment. The mental health professional believed that the misconduct was more about violence, control, underlying emotional issues and unmet emotional needs than about sex. If Dylan did not successfully complete an intensive, offense-specific treatment program, he would continue to pose a risk to others and would require a higher level of care and custody. Cutting off the minor's access to computer pornography would not be a sufficient response to Dylan's problem. He needed

psychiatric treatment to address his sexual offending conduct and his obsession with pornography. The psychiatric social worker and his treatment team found Dylan unsuitable for an outpatient program for low-risk offenders, but believed that he might benefit from more frequent, intense services that could be offered in an appropriate residential setting.

D. Initial Disposition

In the disposition report, the probation officer opined that Dylan had expressed little genuine remorse, having stated that he would have continued to molest Jane Doe if she had not started crying. Given the nature of the offense and the parents' inability to deter Dylan's delinquent behavior despite their supervision and guidance, a return to their home was not recommended. The type of treatment that the minor required could not be provided in an outpatient setting, according to the probation officer. Commitment to DJJ was recommended—for his treatment and for the safety of the community. On his release from DJJ, Dylan would be required to register as a sex offender.⁴

Dylan opposed this recommendation, noting that the recommended placement was most severe; that he had committed his first offense when he was 15; and that less restrictive placements had not yet been tried. He argued that he was not a suitable candidate for DJJ commitment and that he would be stigmatized by a registration requirement.

In July 2008, the juvenile court commissioner conducted the initial disposition hearing. It reviewed the psychiatric social worker's report and concluded that while it recommended treatment, it did not appear to make a placement recommendation. It indicated its willingness to consider other views of that issue. The commissioner had spoken personally with the head of the DJJ's sex offender treatment program, who outlined the type of placement and the caregivers he would assign to Dylan's case. The DJJ program would allow him to be considered for parole in four years, with a sex offender registration requirement.

⁴ By contrast, if Dylan was placed in residential treatment for 18 to 24 months, it was likely that he would not be required to register as a sex offender.

The two sides offered different views of Dylan. The prosecutor saw him as a textbook pedophile—a manipulative person who earned the trust of his own family and the victim’s family before molesting the girl. He argued that Dylan had serious emotional issues that would be difficult to treat. The prosecutor argued that Dylan and his family did not appreciate the true nature of the problems that made him so dangerous to others. For his part, Dylan emphasized that he was a first-time offender with a strong family; that he had done well while at juvenile hall; and that his family had the means to provide treatment for him.

The parties also debated possible dispositions—a short term of residential treatment followed by outpatient care; a longer term residential treatment program; or a DJJ commitment. The prosecutor sought a DJJ commitment, while Dylan asked for a residential or outpatient treatment program. Dylan read the court-appointed psychiatric social worker’s evaluation as recommending residential treatment first, with the possibility of a DJJ commitment if Dylan did not respond to that treatment. The prosecutor disagreed with this interpretation. Dylan’s parents were prepared to assist him in obtaining intensive, successful treatment. Dylan reasoned that if he obtained early treatment, he was unlikely to become an adult sex offender.

At the close of the hearing, the juvenile court commissioner ordered Dylan committed to DJJ for a maximum eight-year term of confinement.⁵ It found that returning the minor to his parents would be contrary to his welfare. It concluded that the intensive sex offender treatment offered by the DJJ would probably benefit Dylan. The juvenile court commissioner also found that the deterrent effect of sex offender registration would be an important part of his therapy.

E. Disposition after Rehearing

Dylan applied for rehearing, arguing that the commissioner had misread the results of the court-ordered evaluation, had failed to ask for a continuance to clarify the meaning of that evaluation, failed to consider less restrictive placement alternatives, and failed to

⁵ Dylan remained at juvenile hall pending an opening at the DJJ.

show that Dylan would benefit from a DJJ commitment. (§ 252.) Dylan argued that in out-of-court statements made since the commitment, the psychiatric social worker had indicated that his recommendation and that of his staff had been for residential treatment, not for a DJJ commitment. In August 2008, a juvenile court judge concluded that the commissioner misread the psychiatric social worker's report and failed to adequately consider less restrictive placement alternatives. It granted the application for rehearing, stayed the DJJ commitment order, and continued the hearing until the psychiatric social worker could appear as a witness.

At the de novo rehearing on the disposition, Dylan argued that a DJJ commitment was inappropriate for a 16-year-old first time offender. His counsel had determined that the program that the juvenile court commissioner had intended for Dylan treated mostly institutionalized offenders who were between the ages of 18 and 20. Some of them had psychological disorders; some were incorrigible. He painted the facility as more of a jail than a treatment facility. By contrast, Dylan reasoned that if the court was not inclined to return him to his parents and place him in an outpatient program, that he would be better served by being placed at a residential treatment group home in Stockton.

The juvenile court heard from the authors of the two psychological reports. The psychologist retained by Dylan's family opined that the young man was a good candidate for either residential or outpatient treatment. The court-appointed psychiatric social worker opined that Dylan needed treatment.

The victim's parents stated that the victim told her mother that Dylan had penetrated her vagina with his penis. The parents had reported the information to police. Dylan's counsel expressed concern about this last-minute allegation coming in and reported that his client adamantly denied ever doing anything of that nature. Dylan also made a statement expressing his remorse for the molestation he had admitted. The juvenile court observed that Dylan seemed aware of the impact of the molestation charge on his life, but did not mention the harm he caused to his victim.

At the close of the hearing, the juvenile court stated that it had tried to fashion a less restrictive alternative to DJJ commitment—one that would protect the public and

allow Dylan to obtain treatment. That ideal program turned out to be similar to what was proposed as part of a DJJ commitment. The court's opinion of the case was also colored by the report of vaginal penetration, which it deemed credible.

The juvenile court found that Dylan's welfare required that he be removed from the custody of his parents. It also found that his mental condition was such that it was probable that he would benefit from the treatment that would be provided by the DJJ. Dylan was found to be a ward of the juvenile court and committed to the DJJ for a maximum term of confinement of eight years.

II. HEARSAY EVIDENCE

First, Dylan complains that the juvenile court erred by considering unadjudicated hearsay evidence of his vaginal penetration of Jane Doe—evidence that was first offered at the second disposition hearing. The child had made this report shortly before the second disposition hearing. The parents reported the child's statement to police and Dylan's counsel was provided with the police report several days before the hearing. Both the juvenile court and the psychiatric social worker acknowledged that the new report of vaginal penetration was cause for concern.

On appeal, Dylan complains about the consideration of this evidence, but cites no case authority arguing that it should have been excluded. An appellant's failure to articulate any legal argument in an opening brief may be deemed an abandonment of that aspect of the appeal. (See *Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785; *Berger v. Godden* (1985) 163 Cal.App.3d 1113, 1119; see also 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 701, pp. 769-771.)

Even if we were to consider this issue, we would find the juvenile court's consideration of the challenged evidence to be within its authority. At disposition, the juvenile court must consider certain factors, including the circumstances and gravity of the offenses that the minor committed. (§ 725.5, subd. (2); *In re Jonathan T.* (2008) 166 Cal.App.4th 474, 484-485; *In re Robert H.* (2002) 96 Cal.App.4th 1317, 1330.) It is not limited to that evidence, but can consider the broadest range of relevant and material evidence in order to determine how best to rehabilitate the minor and to afford the minor

adequate care. (*In re Robert H.*, *supra*, at p. 1329 [underlying facts of allegations that were not adjudicated]; see § 725.5.)

Dylan objects to the consideration of this hearsay evidence. He did not raise a hearsay objection in the juvenile court, but if he had done so, it would have been properly overruled. Hearsay evidence that would be inadmissible at a jurisdictional hearing is admissible at a juvenile delinquency dispositional hearing. (*In re Vincent G.* (2008) 162 Cal.App.4th 238, 243-244; *In re Michael V.* (1986) 178 Cal.App.3d 159, 170 fn. 18.)

At disposition, the juvenile court must consider any oral statement from the parent of a minor-victim. (§ 706.) The evidence of vaginal penetration came to the court from her parents' testimony. Even though the allegation of vaginal penetration was recently discovered, it had been formally documented in a police report and notice had been provided to Dylan's counsel in advance of the second disposition hearing.

Dylan admitted only one allegation of lewd and lascivious conduct, but he does not question that the juvenile court was entitled to consider the dismissed allegations of lewd and lascivious conduct and those of oral copulation. (See *In re Robert H.*, *supra*, 96 Cal.App.4th at p. 1329 [after minor admits lesser charge, juvenile court may consider facts surrounding greater charge at disposition]; *In re Jimmy P.* (1996) 50 Cal.App.4th 1679, 1685-1686.) The juvenile court was also entitled to consider the allegation of vaginal penetration brought out at the second disposition hearing, which was a *de novo* proceeding.

III. PROBABLE BENEFIT FROM COMMITMENT

A. Standard of Review

Dylan also contends that the juvenile court erred when committing him to the DJJ because there was no substantial evidence of probable benefit to him from the commitment. The juvenile court made a finding that it was probable that he would benefit from DJJ treatment. On appeal, Dylan contends that there was no credible evidence of probable benefit, only evidence that was speculative. He argues that, as a matter of law, the evidence was insufficient to support this finding, and that reversal of the disposition order is required for this reason.

A juvenile court commitment order can be overturned on appeal only if that court abused its discretion. (*In re Jonathan T.*, *supra*, 166 Cal.App.4th at p. 485; *In re Robert H.*, *supra*, 96 Cal.App.4th at pp. 1329-1330.) It is not our responsibility to determine the most appropriate placement for the minor. That duty falls to the juvenile court, whose decision will be reversed only if that decision exceeds the bounds of reason. (*In re Carl N.* (2008) 160 Cal.App.4th 423, 432; *In re Khamphouy S.* (1993) 12 Cal.App.4th 1130, 1135.) We must indulge all reasonable inferences to support the juvenile court's decision and will not disturb its findings if substantial evidence supports them. (*In re Jonathan T.*, *supra*, 166 Cal.App.4th at p. 485; *In re Carl N.*, *supra*, 160 Cal.App.4th at p. 432; *In re Robert H.*, *supra*, 96 Cal.App.4th at pp. 1329-1330.) We cannot lightly substitute our decision for that of the juvenile court.

When determining whether substantial evidence supports the juvenile court's commitment order, we examine the record presented at disposition in light of the purposes of the juvenile court law. That statute acknowledges that punishment is a rehabilitative tool and recognizes that a restrictive commitment constitutes a means of protecting the public safety. (*In re Carl N.*, *supra*, 160 Cal.App.4th at pp. 432-433; see § 202, subd. (b).) Even so, a DJJ commitment may not be made solely on retribution grounds. (§ 202, subd. (e); *In re Eddie M.* (2003) 31 Cal.4th 480, 507; *In re Carl N.*, *supra*, 160 Cal.App.4th at p. 433.) A minor may not be committed to the DJJ unless the juvenile court judge is fully satisfied that the minor will benefit from the educational discipline or other treatment provided there. (§ 734.)

A commitment to DJJ is not an abuse of discretion if evidence demonstrates a probable benefit to the minor from the commitment and the inappropriateness of less restrictive alternatives.⁶ This analysis is made with the legislative purposes of the

⁶ A DJJ commitment may be made in the first instance, without attempts to succeed in a less restrictive placement. (*In re Eddie M.*, *supra*, 31 Cal.4th at p. 507; *In re Carl N.*, *supra*, 160 Cal.App.4th at p. 433.) The circumstances of a particular case may suggest the desirability of a DJJ commitment despite the availability of other alternative dispositions. (*In re Samuel B.* (1986) 184 Cal.App.3d 1100, 1104, disapproved on other grounds in *People v. Hernandez* (1988) 46 Cal.3d 194, 206 fn. 14; see *In re Robert H.*,

juvenile court law in mind. (*In re Jonathan T.*, *supra*, 166 Cal.App.4th at p. 485; *In re Carl N.*, *supra*, 160 Cal.App.4th at p. 433; *In re Pedro M.* (2000) 81 Cal.App.4th 550, 555-556.) Among the express purposes of that statutory scheme are to provide for public safety and for the best interests of the minor. The guidance offered to minors may properly include the imposition of punishment represented by a DJJ commitment, in an appropriate case. (§ 202, subds. (a), (b), (e)(5).)

B. *DJJ Commitment*

The juvenile court must determine if the record supports a finding that it is probable that the minor will benefit from a DJJ commitment. There is no requirement that the court find precisely how a minor would benefit from a commitment to the DJJ. (*In re Jonathan T.*, *supra*, 166 Cal.App.4th at p. 486.) In the matter before us, the juvenile court judge made a specific inquiry into possible placements for Dylan, trying to determine what type of treatment placement would be most effective for him. It explored the suitability of placement at a specific residential treatment facility that defense counsel proposed. The DJJ offered a two-year juvenile sex offender program, as well as a curriculum to address making positive decisions, having victim awareness, and dealing with anger issues. The juvenile court judge described the DJJ program that it chose for Dylan as “a very effective adolescent sex offender program” and specifically found that this commitment would probably benefit the minor.

The juvenile court was not required to take the evidence it considered at face value. It was entitled to evaluate Dylan’s credibility and to determine the weight to be afforded to the recommendations of the mental health professionals. (See *In re Robert H.*, *supra*, 96 Cal.App.4th at p. 1329.) There is no evidence that the juvenile court unreasonably ignored the reports of the mental health professionals. (See, e.g., *ibid.* [social study].) The psychiatric social worker initially supported a residential treatment

supra, 96 Cal.App.4th at p. 1329 [camp placement].) The juvenile court considered a less restrictive placement, but ultimately rejected it. (See, e.g., *In re Jonathan T.*, *supra*, 166 Cal.App.4th at p. 486.) Thus, we may reasonably infer that the juvenile court concluded that a less restrictive alternative would be inappropriate or ineffective. (See *ibid.*)

placement rather than a DJJ commitment, but acknowledged at the second disposition hearing that the new report of the more serious offense of vaginal penetration cast a different light on the situation. The probation officer recommended the DJJ commitment, both for Dylan's benefit and for the safety of the community. It is also significant that the juvenile court judge—known as a critic of some aspects of the DJJ—chose to place the minor with that agency. (See, e.g., *In re Carl N.*, *supra*, 160 Cal.App.4th at p. 433.)

In our view, Dylan is not the type of mildly delinquent minor whose commission of a nonassaultive, victimless crime makes him unsuitable for commitment to the DJJ among more serious delinquents. (See *In re Teofilio A.* (1989) 210 Cal.App.3d 571, 577-578.) The mental health evaluations offer a snapshot of a troubled young man unable to control his sexual impulses, despite a very strict upbringing. His parents were unable to prevent the damaging effects of Dylan's misconduct on a very young child left in his mother's care. The professional evaluations suggest that his problems stem from sources so deeply buried that it may take lengthy, intense measures to uncover and remedy them. Given the seriousness of the underlying conduct and the challenges that Dylan faces in treating the underlying causes of this delinquent behavior, we find substantial evidence to support the juvenile court's finding that a DJJ commitment is of probable benefit to him. Thus, we conclude that the juvenile court acted within its discretion when determining that Dylan should be committed to the DJJ.

The juvenile court's order is affirmed.

Reardon, J.

We concur:

Ruvolo, P.J.

Rivera, J.